

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-03-SJ-009
)	
Southern Broadcasting Corporation)	NAL/Acct. No.200332680003
Licensee of WENA)	
Yauco, Puerto Rico)	FRN 0007733926
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 11, 2003

By the Enforcement Bureau, San Juan Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Southern Broadcasting Corporation (“Southern”), licensee of Radio Broadcast Station WENA, Yauco, Puerto Rico, apparently liable for forfeiture in the amount of eight thousand dollars (\$8000) for willful and repeated violation of Section 11.35 of the Commission's Rules (“Rules”).¹ Specifically, we find Southern apparently liable for not having installed EAS transmitting and monitoring capabilities during station operation.

II. BACKGROUND

2. On February 6, 2003, agents of the Commission’s San Juan Office conducted an inspection at the studio and transmitter site for broadcast station WENA-AM in Yauco, Puerto Rico. The agents found no EAS equipment installed at the studio. Southern’s President and General Manager stated that the EAS equipment had never been installed.

III. DISCUSSION

3. Section 11.35 requires that broadcast stations maintain EAS transmitting and monitoring capabilities during the time the stations are in operation. On February 6, 2003, Southern had no EAS equipment installed at station WENA-AM.

4. Based on the evidence before us, we find Southern willfully² and repeatedly³ violated Section

¹ 47 C.F.R. § 11.35.

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

³ The term “repeated,” when used with reference to the commission or omission of any act, “means the commission or

11.35 of the Rules by failing to have installed equipment capable of monitoring and transmitting the EAS system.

5. Pursuant to Section 1.80(b)(4) of the Rules,⁴ the base forfeiture amount for failing to have installed EAS equipment is \$8000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended (“Act”), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁵ Considering the entire record and applying the factors listed above, this case warrants an \$8000 forfeiture.

IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁶ and Sections 0.111, 0.311 and 1.80 of the Rules,⁷ Southern Broadcasting Corporation is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of eight thousand dollars (\$8000) for willful and repeated violation of Section 11.35 of the Rules by failing to have installed EAS transmitting and monitoring capabilities.

7. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Southern Broadcasting Corporation SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

8. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

9. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

⁴ 47 C.F.R. § 1.80(b)(4).

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁸ See 47 C.F.R. § 1.1914.

10. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

11. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

12. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Southern Broadcasting Corporation, POB 1338, Yauco, PR 00698.

FEDERAL COMMUNICATIONS COMMISSION

Reuben Jusino
Resident Agent San Juan Office, Enforcement Bureau

Attachment